



April 7, 2003

ENGROSSED SENATE BILL No. 115

DIGEST OF SB 115 (Updated April 7, 2003 4:01 PM - DI 105)

Citations Affected: IC 35-44; noncode.

Synopsis: Trafficking with an inmate. Provides a defense to a charge of trafficking with an inmate if the article delivered to the inmate is: (1) not contraband or prohibited property; (2) necessary for the health or safety of the inmate; and (3) delivered to the inmate after the penal facility has failed to deliver the article after a previous request. Provides certain employees of penal facilities who have been the subject of adverse employment decisions based upon trafficking with an inmate with an opportunity for an employment redetermination.

Effective: January 1, 2001 (retroactive); July 1, 2003.

Lubbers, Clark, Wyss

(HOUSE SPONSORS — MAHERN, MURPHY)

January 7, 2003, read first time and referred to Committee on Criminal, Civil and Public Policy.

January 16, 2003, amended, reported favorably — Do Pass.

January 23, 2003, read second time, amended, ordered engrossed.

January 24, 2003, engrossed.

January 27, 2003, read third time, passed. Yeas 30, nays 20.

HOUSE ACTION

March 4, 2003, read first time and referred to Committee on Courts and Criminal Code.
April 7, 2003, amended, reported — Do Pass. Recommitted to Committee on Ways and Means.

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ES 115—LS 6516/DI 106+



April 7, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

ENGROSSED SENATE BILL No. 115

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-44-3-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) A person who
3 knowingly or intentionally:

4 (1) forcibly resists, obstructs, or interferes with a law enforcement
5 officer or a person assisting the officer while the officer is
6 lawfully engaged in the execution of his duties as an officer;

7 (2) forcibly resists, obstructs, or interferes with the authorized
8 service or execution of a civil or criminal process or order of a
9 court; or

10 (3) flees from a law enforcement officer after the officer has, by
11 visible or audible means, **including by operation of the law**
12 **enforcement officer's siren or emergency lights**, identified
13 himself and ordered the person to stop;
14 commits resisting law enforcement, a Class A misdemeanor, except as
15 provided in subsection (b).

16 (b) The offense under subsection (a) is a:

17 (1) Class D felony if:

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(A) the offense is described in subsection (a)(3) and the person uses a vehicle to commit the offense; or

(B) while committing any offense described in subsection (a), the person draws or uses a deadly weapon, inflicts bodily injury on **or otherwise causes bodily injury to** another person, or operates a vehicle in a manner that creates a substantial risk of bodily injury to another person;

(2) Class C felony if, while committing any offense described in subsection (a), the person operates a vehicle in a manner that causes serious bodily injury to another person; and

(3) Class B felony if, while committing any offense described in subsection (a), the person operates a vehicle in a manner that causes the death of another person.

(c) For purposes of this section, a law enforcement officer includes an ~~alcoholic beverage~~ enforcement officer **of the alcohol and tobacco commission** and a conservation officer of the department of natural resources.

SECTION 2. IC 35-44-3-9, AS AMENDED BY P.L.243-1999, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2001 (RETROACTIVE)]: Sec. 9. (a) As used in this section, "juvenile facility" means the following:

(1) A secure facility (as defined in IC 31-9-2-114) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(2) A shelter care facility (as defined in IC 31-9-2-117) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(b) A person who, without the prior authorization of the person in charge of a penal facility or juvenile facility knowingly or intentionally:

(1) delivers, or carries into the penal facility or juvenile facility with intent to deliver, an article to an inmate or child of the facility;

(2) carries, or receives with intent to carry out of the penal facility or juvenile facility, an article from an inmate or child of the facility; or

(3) delivers, or carries to a ~~work site~~ **worksite** with the intent to deliver, alcoholic beverages to an inmate or child of a jail work crew or community work crew;

commits trafficking with an inmate, a Class A misdemeanor. However, the offense is a Class C felony if the article is a controlled substance or

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1 a deadly weapon.

2 (c) It is a defense to a charge under subsection (b)(1) that the
3 article delivered to an inmate or child is:

4 (1) not contraband or prohibited property (as defined in
5 IC 11-11-2-1);

6 (2) necessary for the health or safety of the inmate or child;
7 and

8 (3) delivered because the facility has not provided the inmate
9 or child with the article after the inmate, the child, or an
10 employee of the facility has requested the article.

11 SECTION 3. [EFFECTIVE JULY 1, 2003] An employee of a penal
12 facility who has been the subject of an adverse employment
13 decision based on a violation of IC 35-44-3-9(b)(1) involving the
14 delivery of an article that is not contraband or prohibited property
15 (as defined in IC 11-11-2-1) after January 1, 2002, and before July
16 1, 2003, is entitled to a redetermination of any employment action
17 taken in response to the violation, including but not limited to a
18 rehearing or reinstatement.

19 SECTION 4. [EFFECTIVE JULY 1, 2003] IC 35-44-3-3, as
20 amended by this act, applies only to acts committed after June 30,
21 2003.

22 SECTION 5. An emergency is declared for this act.

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SENATE MOTION

Mr. President: I move that Senator Clark be added as second author of Senate Bill 115.

LUBBERS

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COMMITTEE REPORT

Mr. President: The Senate Committee on Criminal, Civil and Public Policy, to which was referred Senate Bill No. 115, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 4, after "on" insert "**or otherwise causes bodily injury to**".

Page 2, delete lines 31 through 33.

and when so amended that said bill do pass.

(Reference is to SB 115 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 7, Nays 1.

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SENATE MOTION

Mr. President: I move that Senator Wyss be added as coauthor of Senate Bill 115.

LUBBERS

SENATE MOTION

Mr. President: I move that Senate Bill 115 be amended to read as follows:

Page 1, line 11, after "means," insert "**including by operation of the law enforcement officer's siren or emergency lights,**".

(Reference is to SB 115 as printed January 17, 2003.)

YOUNG R MICHAEL

SENATE MOTION

Mr. President: I move that Senate Bill 115 be amended to read as follows:

Page 2, line 17, after "under" insert "**subsection (b)(1)(B), subsection (b)(2), or subsection (b)(3),**".

Page 2, line 18, delete "this section,".

(Reference is to 115 as printed January 17, 2003.)

BRAY

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 115, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, delete lines 18 through 32, begin a new paragraph and insert:

"SECTION 2. IC 35-44-3-9, AS AMENDED BY P.L.243-1999, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2001 (RETROACTIVE)]: Sec. 9. (a) As used in this section, "juvenile facility" means the following:

(1) A secure facility (as defined in IC 31-9-2-114) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(2) A shelter care facility (as defined in IC 31-9-2-117) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(b) A person who, without the prior authorization of the person in charge of a penal facility or juvenile facility knowingly or intentionally:

(1) delivers, or carries into the penal facility or juvenile facility with intent to deliver, an article to an inmate or child of the facility;

(2) carries, or receives with intent to carry out of the penal facility or juvenile facility, an article from an inmate or child of the facility; or

(3) delivers, or carries to a ~~work site~~ **worksite** with the intent to deliver, alcoholic beverages to an inmate or child of a jail work crew or community work crew;

commits trafficking with an inmate, a Class A misdemeanor. However, the offense is a Class C felony if the article is a controlled substance or a deadly weapon.

(c) It is a defense to a charge under subsection (b)(1) that the article delivered to an inmate or child is:

(1) not contraband or prohibited property (as defined in IC 11-11-2-1);

(2) necessary for the health or safety of the inmate or child; and

(3) delivered because the facility has not provided the inmate or child with the article after the inmate, the child, or an employee of the facility has requested the article.

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SECTION 3. [EFFECTIVE JULY 1, 2003] **An employee of a penal facility who has been the subject of an adverse employment decision based on a violation of IC 35-44-3-9(b)(1) involving the delivery of an article that is not contraband or prohibited property (as defined in IC 11-11-2-1) after January 1, 2002, and before July 1, 2003, is entitled to a redetermination of any employment action taken in response to the violation, including but not limited to a rehearing or reinstatement."**

Page 2, after line 35, begin a new paragraph and insert:
"SECTION 4. An emergency is declared for this act."
 Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 115 as reprinted January 24, 2003.)

WEINZAPFEL, Chair

Committee Vote: yeas 7, nays 1.

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